

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

HOWARD UNIVERSITY/ UNIVERSITY LAW
SCHOOL and BRUCE COSTELLA
Respondents

Case Nos.: I-00-10669
I-00-10670

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 – 2-1802.05) and Title 21 Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No.00-10669) served on Respondents in person on September 21, 2001, the Government charged Respondents Howard University/University Law School and Bruce Costella with violations of 21 DCMR 532.4(a) (failure to comply with conditions of a storm management plan) and 21 DCMR 532.4(c) (failure to comply with an approved construction plan). The Notice of Infraction charged that the alleged violations occurred on September 11, 2001, at the Howard University Law School, 2225 Georgia Ave. N.W., and sought a fine of \$100 for each of the alleged violations, for a total of \$200.

Respondents did not file an answer to the Notice of Infraction within the required fifteen (15) days after service. D.C. Official Code § 2-1802(e). Accordingly, on October 19, 2001, this administrative court issued an order finding Respondents in default and subject to statutory penalties in the total amount of \$200, pursuant to D.C. Official Code § 2-1801.04(a)(2)(A), and directing the Government to issue a second Notice of Infraction, pursuant to D.C. Official Code § 2-1802.02(f). The order of default was served on October 22, 2001, and the Government served a second Notice of Infraction (No. 00-10670) on October 31, 2001.

On November 16, 2001, this administrative court received Respondents' plea of Admit along with a \$200 check issued by Respondent Howard University. The check is No. 04-948750 and it is dated October 24, 2001. On November 20, 2001, this administrative court issued an order acknowledging receipt of Respondents' plea and the payment of the fines, confirming that the statutory penalties of \$200 remained in effect and allowing Respondents the opportunity to seek the suspension or reduction of the statutory penalties.

On December 4, 2001, this administrative court received a letter from Patricia Monroe, Executive Assistant, Office of Capital Projects for Respondent Howard University, requesting a waiver of the penalties on the ground that the delay in filing a response to the Notice of Infraction and making the payment was due to the extraordinary events which occurred on September 11, 2001, and thereafter and the resulting delays in mail deliveries. Ms. Monroe stated:

The University, as you are probably aware, has been dealing with not only an anthrax virus here on the campus but with the main Brentwood post office as well. The payment for this infraction was processed on September 25, 2001; the check number is 948750. The check was mailed out of the University post office in October and is probably hung up in the Brentwood facility.

The Government was permitted to reply to the Respondents' request for suspension or reduction of the statutory penalties, and it responded that it "has no objection to any considerations given by OAH for a suspension or reduction of the penalties assessed." This matter is now ripe for decision.

II. Findings of Fact

1. By their plea of Admit Respondents have admitted that they violated 21 DCMR 532.4(a) and 21 DCMR 532.4(c), as charged in the Notice Infraction.
2. Respondents' plea and payment were not timely filed.
3. Respondents have not provided a credible explanation for their failure to timely respond to the Notice of Infraction.

III. Conclusions of Law

By their plea of Admit with payment of the fines, Respondents have acknowledged their liability for the violations as charged in the Notice of Infraction. Accordingly, the sole issue to be determined is whether there is "good cause" for the suspension or reduction of the statutory penalties for the Respondents' failure to timely respond.

The Civil Infractions Act requires the recipient of a Notice of Infraction to demonstrate “good cause” for the failure to answer within the time allowed by the statute. If there is a failure to answer and “good cause” is not shown, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). A fine of \$100 is authorized for a violation of 21 DCMR 532.4 (a) and a fine of \$100 is authorized for a violation of 21 DCMR 532.4(c). 16 DCMR 3234.2(h) and 16 DCMR 3234.2(j).

Since Respondents were personally served with the first Notice of Infraction on September 21, 2001, their answer was due within fifteen (15) days, namely by Monday October 8, 2001. D.C. Official Code § 2-1802.02(e). The Respondents’ plea and the check in payment of the fines specified in the Notice of Infraction were received by this administrative court on November 16, 2001, more than thirty days late.

Respondent Howard University’s check in payment of the fines is dated October 24, 2001. This is sixteen days after the Respondents’ response to the Notice of Infraction was due and two days after service of this administrative court’s order of default, which found the Respondents subject to the statutory penalties. Therefore, Respondents’ failure to timely respond to the Notice of Infraction and make payment could not be attributed to the fault of the United States Postal Service, as suggested by Respondents. Based on the record before me, Respondents have failed to demonstrate good cause for their untimely plea and payment and, therefore, there is no basis for me to suspend or reduce the statutory penalties.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is this _____
day of _____, 2002:

ORDERED, that Respondents Howard University/University Law School and Bruce Costella, jointly and severally, shall pay a total of **TWO HUNDRED DOLLARS (\$200)** in accordance with the attached instructions, within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail, pursuant to D.C. Official Code §2-1802.04 and § 2-1802.05; and it is further

ORDERED, that if Respondents fail to pay the above amount within twenty (20) calendar days of the date of mailing of this Order, by law, interest will accrue on the unpaid amount at the rate of 1 ½% per month, or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code §. 2-1803(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal owned by Respondents, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondents' business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/15/02**

Robert E. Sharkey
Administrative Judge